



Malaysian Communications and Multimedia Commission

Guidelines on Access Undertakings

30 September 2025

Malaysian Communications and Multimedia Commission
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Foreword

These Guidelines (as defined in the Definition and Glossary below) have been prepared by the Commission (as defined in the Definition and Glossary below) as guidance which outline the procedure in respect of an access undertaking provided pursuant to section 155 of the **CMA 1998** (as defined in the Definition and Glossary below), in accordance with section 110 of the CMA 1998, and the Commission's general approach in its consideration to register an access undertaking pursuant to sections 111 and 156 of the CMA 1998.

These Guidelines are not an exhaustive summary of all the factors that the Commission may take into account when considering an access undertaking and does not bind or limit it in any way.

These Guidelines are intended as a guide only and should not be relied on as a substitute for the CMA 1998 or any subsidiary legislations made thereunder or as a substitute for legal advice.

These Guidelines may be revised by the Commission from time to time as deemed necessary, without prior consultation and notice.

Definition and Glossary

For purposes of these Guidelines, unless the context otherwise requires:

- (a) any term used in these Guidelines shall have the same meaning as in the CMA 1998 or the subsidiary legislations made under it;
- (b) words denoting the singular shall include the plural and vice-versa; and
- (c) the following terms used in these Guidelines shall have the stated meaning:

Access List	The Commission Determination on Access List, Determination No. 6 of 2021 or any subsequent issuance of Commission Determination on Access List by the Commission
Commission	The Malaysian Communications and Multimedia Commission
CMA 1998	The Communications and Multimedia Act 1998
Guidelines	Guidelines on Access Undertaking
VIC	Voluntary Industry Code

Figure

Figure 1 Procedure in respect of the submission and registration of an access undertaking

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1 Background

Legislative context

- 1.1 Section 155 of the CMA 1998 states that a licensee may provide an access undertaking, in accordance with section 110 of the CMA 1998, which may specify more than one set of terms and conditions for access to a particular network facility or network service.
- 1.2 These Guidelines outline the procedure in respect of an access undertaking provided pursuant to section 155 of the CMA 1998, in accordance with section 110 of the CMA 1998, and the Commission's general approach in its consideration to register an access undertaking pursuant to sections 111 and 156 of the CMA 1998.
- 1.3 While section 110 of the CMA 1998 states that 'a person' may provide an undertaking to the Commission, section 155 of the CMA 1998 states that 'a licensee' may provide an access undertaking, in accordance with section 110 of the CMA 1998. As such, for the purposes of these Guidelines, section 110 must be read together with section 155 of the CMA 1998 and consequently only licensees may provide an undertaking to the Commission.
- 1.4 Access undertakings made pursuant to section 155 of the CMA 1998 are subject to Part V, Chapter 11 of the CMA 1998 which contains general provisions on undertakings, including provisions on the registration, withdrawal and replacement of an undertaking. The provisions under Part V, Chapter 11 are as follows:
 - (a) Section 110 of the CMA 1998 provides that a person may provide an undertaking to the Commission regarding any matter which may be the subject of a voluntary industry code ("**VIC**") under the CMA 1998 or for which the CMA 1998 makes express provision. The undertaking may set out the terms and conditions for the undertaking or adopt the model terms and conditions from a registered VIC, may also include the effective date of the undertaking and the date of its expiry.
 - (b) Section 111 of the CMA 1998 provides for the registration of an undertaking including on its validity and enforceability, submission of application, refusal, and conditions for registration by the Commission. In relation to the registration of an access undertaking, section 111 of the CMA 1998 must be read together with section 156 of the CMA 1998. As such, for the purposes of these Guidelines, any reference to the word 'undertaking' would refer to an access undertaking, where applicable.
 - (c) Section 112 of the CMA 1998 provides the Minister with the power to make rules in respect of undertakings and provides the Commission with the power to direct the party making the undertakings and all other persons relying on such undertakings to comply with the rules and any registered undertakings.
 - (d) Section 113 of the CMA 1998 provides that a person providing an undertaking may withdraw the undertaking with the approval of the Commission.

- (e) Section 114 of the CMA 1998 provides that a person may submit a new undertaking to the Commission which deals with the same matter as an existing registered undertaking provided by that person, whereby, the existing registered undertaking is taken to be invalid to the extent of any conflict with the new undertaking at the time the new undertaking is registered under section 111 of the CMA 1998.
- (f) Section 115 of the CMA 1998 provides that the Commission shall maintain a register of all existing undertakings in accordance with Chapter 6 of Part V of the CMA 1998.
- (g) Section 116 of the CMA 1998 provides that the Commission or a person may apply to the High Court for the enforcement of a registered undertaking against the person providing the undertaking if the undertaking has not been complied with. It also provides that a direction made by the Commission pursuant to subsection 112(2) of the CMA 1998 may be enforced by the High Court as if the direction is a judgment of the High Court, provided that a certificate has been issued by the Commission to the party seeking to enforce the registered undertaking for leave to proceed to the High Court.

2 Procedure in respect of an access undertaking

2.1 This section sets out the procedure in respect for an access undertaking pursuant to section 155 of the CMA 1998, in accordance with section 110 of the CMA 1998.

Persons giving the access undertaking

2.2 As highlighted in paragraph 1.3 above, an access undertaking submitted pursuant to section 155 of the CMA 1998, in accordance with section 110 of the CMA 1998, is by a licensee.

2.3 In the context of the access framework, the licensees who will provide the access undertaking are generally the licensee who is a network facility provider who owns or provides a facility and/or a network service provider who provides services under the CMA 1998.

2.4 The access undertaking provided under section 155 of the CMA 1998 would be in respect of access to facilities or services listed and not listed in the Access List.

Procedure

2.5 The procedure in respect of an access undertaking provided pursuant to section 155 of the CMA 1998 constitutes two phases, namely:

- (a) assessment phase; and
- (b) registration phase.

ASSESSMENT PHASE

2.6 The assessment phase begins once a licensee submits a draft access undertaking to the Commission for assessment ("Draft Undertaking").

2.7 The submission of the Draft Undertaking to the Commission for assessment should be made in writing and accompanied by the following:

- (a) a cover letter with a brief description of the Draft Undertaking; and
- (b) any other information that may be relevant for the assessment of the Draft Undertaking (i.e. other than the relevant information required under Section 3 of these Guidelines).

2.8 A list of elements that should be included in the Draft Undertaking is detailed in Section 3 of these Guidelines.

2.9 Once the Draft Undertaking has been submitted to the Commission for assessment, the Commission will assess the Draft Undertaking accordingly, mainly based on the factors set out in Section 4 of these Guidelines.

- 2.10 The assessment phase may, at the Commission's discretion, constitute the following process:
- (a) consultation between the Commission and the licensee to discuss the Draft Undertaking; and
 - (b) public consultation with third parties carried out by the Commission; and
 - (c) finalisation of the Draft Undertaking.
- 2.11 The Commission may also request additional information as and when required, if the information provided by the licensee in respect of the Draft Undertaking is insufficient.
- 2.12 The Commission may, at any point in the assessment phase, reject the Draft Undertaking if it does not satisfy the factors in Section 4 of these Guidelines.

Consultation between Commission and the licensee

- 2.13 During the assessment phase, the Commission may conduct consultations with the licensee to further discuss and refine the Draft Undertaking. This phase of the procedure allows the licensee to directly consult and engage with the Commission to discuss, among other things:
- (a) the background and the objective of the Draft Undertaking;
 - (b) the scope of the Draft Undertaking, i.e. whether the access undertaking relates to a specific facility or service in the Access List or otherwise;
 - (c) the content of the Draft Undertaking, whether it deals with pricing or non-pricing terms and conditions;
 - (d) dispute resolutions processes; and
 - (e) information to support the draft undertaking such as pricing model, technical details of network, etc.
- 2.14 The Commission may actively engage with the licensee to provide feedback on the Draft Undertaking.
- 2.15 The Commission may engage with the licensee in this manner throughout the assessment and registration phase.

Public consultation with third parties carried out by the Commission

- 2.16 Once the Commission and the licensee have agreed on the contents of the elements of the Draft Undertaking, the Commission may decide to conduct a public consultation with third parties on the Draft Undertaking.
- 2.17 Following the same, the Commission may then carry out further consultation with the licensee to provide feedback based on the results of the public consultation, for the licensee to incorporate into its undertaking, where relevant.

Finalisation of the Draft Undertaking

- 2.18 Following the Commission's assessment and consultation with the licensee, and public consultation with third parties (if any), the licensee may submit the revised Draft Undertaking for final assessment by the Commission.
- 2.19 Once the Commission is satisfied that the revised Draft Undertaking fulfils the necessary assessment criteria as listed in Section 4 of these Guidelines, the Commission will inform the licensee on the outcome of the assessment.

REGISTRATION PHASE

- 2.20 Upon finalisation of the Draft Undertaking, the licensee shall have thirty (30) days to submit a written application to the Commission to register the access undertaking. The licensee may request an extension of time for submission of the access undertaking to be registered, if required.
- 2.21 A written application to register an access undertaking should include the following:
- (a) a cover letter with a brief description of the access undertaking; and
 - (b) the access undertaking to be registered.
- 2.22 The access undertaking should be in line with the elements provided under Section 3 of these Guidelines.
- 2.23 Upon receipt of the written application to register an undertaking from the licensee, the Commission shall have thirty (30) days from the receipt of the application ("**Initial Period**") to notify, the licensee in writing, regarding the Commission's decision on whether the undertaking will be registered or otherwise. The Commission may also, by way of a written notice to the licensee, extend the period by not more than thirty (30) days ("**Extended Period**").

When the registration of an undertaking is deemed refused

- 2.24 If the Commission neither registers nor refuses to register an access undertaking within the Initial Period, the Commission is deemed to have refused the registration unless the licensee submitting the written application to register the undertaking, is notified of the registration within the Extended Period.

Inclusion in the register of undertakings

- 2.25 If the Commission has decided to register an access undertaking, the access undertaking shall be included in the register of undertakings in accordance with sections 81, 115 and 156 of the CMA 1998, which will be maintained by the Commission in both physical and electronic form (on the Commission's website).
- 2.26 The access undertaking shall remain on the register of undertakings even after its expiry, replacement or withdrawal, as a public record of undertakings that have been registered by the Commission. The register will denote if the access undertaking has been withdrawn, replaced or has expired.
- 2.27 A summary of the procedure(s) detailed above (paragraphs 2.6 to 2.26) is illustrated in **Figure 1**.

Withdrawal of an access undertaking

- 2.28 The licensee may withdraw an access undertaking that has been duly registered by the Commission, with the approval of the Commission.

Replacement of an access undertaking

- 2.29 The licensee may replace a registered access undertaking by submitting a new access undertaking which deals with the same matter as the registered access undertaking provided by the same licensee. In such a case, the registered access undertaking is taken to be invalid to the extent of any conflict with the new access undertaking at the time that the new access undertaking is registered under sections 111 and 156 of the CMA 1998.

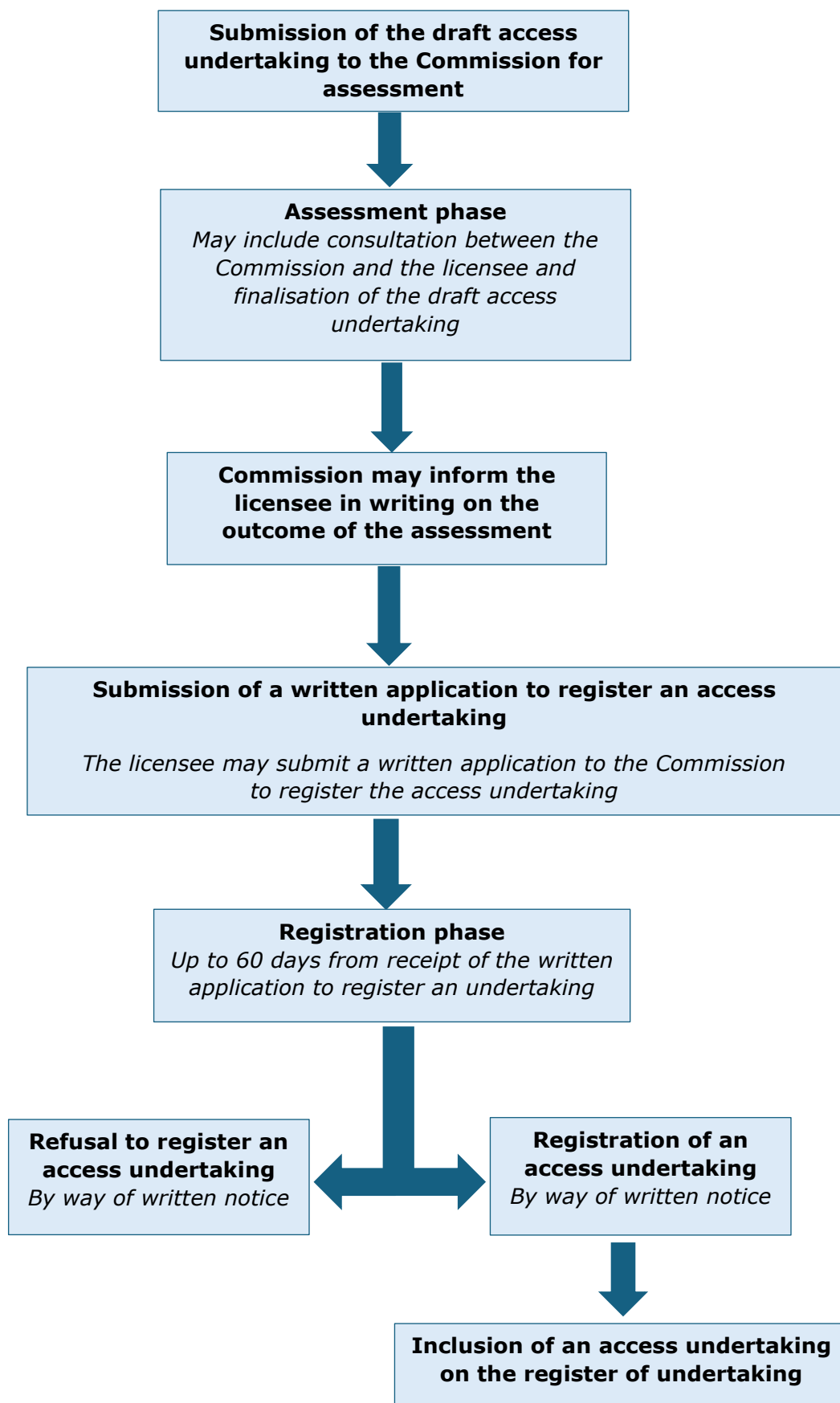


Figure 1 - Procedure in respect of the submission and registration of an access undertaking

3 Elements of an access undertaking

- 3.1 This section details the elements that should be included in the access undertaking submitted to the Commission.
- 3.2 The access undertaking shall include, but is not limited to, the following:
- (a) information on the licensee providing the access undertaking;
 - (b) background and objectives of the access undertaking;
 - (c) scope and nature of the access undertaking;
 - (d) commitments undertaken in the access undertaking; and
 - (e) the date of commencement and duration of the access undertaking.
- 3.3 The access undertaking should also include the following, for the purposes of its enforcement and execution:
- (a) conditions for cessation of the access undertaking;
 - (b) enforcement of the access undertaking;
 - (c) disclosure of the access undertaking;
 - (d) no derogation;
 - (e) governing law; and
 - (f) notices.
- 3.4 An example of the access undertaking is as provided in **Annexure 1: Template for an access undertaking**. The same may be subject to change from time to time based on the discretion of the Commission.

Scope and nature of the access undertaking

- 3.5 An access undertaking provided pursuant to section 155 of the CMA 1998 applies to facilities or services listed in the Access List as well as those not listed in the Access List.
- 3.6 Therefore, the scope and nature reflected in the access undertaking should be in line with the above.
- 3.7 It may include the non-pricing terms and conditions for access and the pricing terms, such as but is not limited to, rate methodologies and/or principles to determine the access price for a particular facility or service.

Commitments undertaken in the access undertaking

- 3.8 The access undertaking should duly reflect the following commitments:
- (a) ensure equitable access to facilities and/or services provided to the other licensee;
 - (b) ensure reasonable terms and conditions to the other licensee; and
 - (c) ensure that the access prices are cost oriented, fair and transparent.
- 3.9 The access undertaking should also include, but not limited to, the following matters:
- (a) requirements to be imposed on the other licensee such as security, insurance and creditworthiness information (including a credit assessment form, if available) required by the licensee;
 - (b) the timeframe and processes for the negotiations of an Access Agreement;
 - (c) capacity allocation policies to address potential capacity constraints;
 - (d) service fulfilment and service assurance timelines;
 - (e) billing and settlement;
 - (f) rate methodologies and/or principles to derive access prices for a particular facility and/or service;
 - (g) the principles governing the allowable extent of price differentiation;
 - (h) dispute resolution procedures; and
 - (i) suspension and termination.
- 3.10 The licensee may consult with the Commission on other relevant commitments to be included in the access undertaking, if any.

Date of commencement and duration of an access undertaking

- 3.11 An access undertaking shall only take effect on the date of its registration or such later date as the access undertaking may specify.
- 3.12 Therefore, the access undertaking must also specify its date of expiry, which shall be three years from the date of the application to register the access undertaking or such other period as agreed by the Commission.

Confidentiality

- 3.13 The Commission is cognisant that any submission of a draft or final undertaking may include sensitive and confidential information. As such, where an access undertaking relates to, or contains confidential information, the access undertaking may make general reference to the information while providing the details of the confidential information to the Commission separately for the Commission's assessment.

4 Assessment by the Commission

- 4.1 This section sets out the position of the law and the relevant factors considered by the Commission when assessing an undertaking submitted to the Commission during the assessment phase. The same would also be considered when the Commission undertakes the evaluation during the registration phase.

Position of the law

- 4.2 Subsections 111(3) and 111(4) of the CMA 1998 provide for the statutory requirements that warrants the registration of an undertaking.
- 4.3 An undertaking is to be registered pursuant to subsection 111(3) of the CMA 1998 if the Commission is satisfied that the undertaking:
- (a) is consistent with the objects of the CMA 1998;
 - (b) is consistent with any instrument made under the CMA 1998;
 - (c) is consistent with any relevant provisions in the CMA 1998; and
 - (d) will expire within three years from the date of the application to register the undertaking or such other period agreed by the Commission.
- 4.4 An undertaking is to be registered pursuant to subsection 111(4) of the CMA 1998 if the undertaking:
- (a) solely adopts model terms and conditions from a registered VIC; and
 - (b) will expire within three years from the date of the application to register the undertaking or such other period as agreed by the Commission.
- 4.5 An access undertaking can also be registered pursuant to subsection 111(5) of the CMA 1998.
- 4.6 Pursuant to section 156 of the CMA 1998, the Commission shall not register an access undertaking, in accordance with its general powers in section 111 of the CMA 1998, unless it is satisfied that the access undertaking is consistent with the standard access obligations.
- 4.7 In any event, any undertaking registered by the Commission should be in line with the relevant laws, including the CMA 1998 and the subsidiary legislations made thereunder.

Factors for assessment of an access undertaking

- 4.8 The Commission may consider the following factors in its assessment of the access undertaking:
- (a) the effectiveness of the licensee's commitments and whether the access undertaking promotes reasonable terms and conditions regarding the supply of facilities or services;
 - (b) the licensee's ability to implement the commitments offered in the access undertaking;
 - (c) the extent of challenges to administer the said access undertaking; or
 - (d) the impact of the access undertaking on the market structure.

Factors resulting in refusal of an access undertaking

- 4.9 The Commission may refuse the registration of an access undertaking under any of the following circumstances:
- (a) the access undertaking is not consistent with the standard access obligations;
 - (b) the access undertaking is inefficient, failing to provide viable resolutions to promote reasonable terms and conditions regarding the supply of facilities or services;
 - (c) the Commission's assessment indicates that the licensee may face difficulties in implementing the commitments provided in the access undertaking;
 - (d) the access undertaking presents challenges in its administration, including potential conflicts with the national policy objectives specified under subsection 3(2) of the CMA 1998;
 - (e) the access undertaking could contribute to a potential regulatory error, which may lead to market distortion or disrupt market evolution in the future;
 - (f) the access undertaking does not provide sufficient evidence or a clear plan for long-term sustainability and effectiveness, which may result in failure to address future challenges or changing market conditions;
 - (g) the implementation of the access undertaking could have a detrimental effect on competition within the market, which may lead to monopolistic practices or an unfair competitive advantage for the licensee; or
 - (h) the access undertaking does not comply with relevant laws, regulations, or other legal requirements, including competition law and consumer protection law.

5 Enforcement of an undertaking

- 5.1 Once the Commission has registered the access undertaking, the licensee providing the access undertaking is required to comply with the terms in the registered access undertaking within the duration stipulated in the said undertaking.
- 5.2 Where a registered access undertaking has not been complied with, there are several enforcement or regulatory actions available to the Commission or to the person that has been affected by the non-compliance of the registered access undertaking.
- 5.3 In relation to the Commission, the following enforcement or regulatory actions are available:
- (a) pursuant to subsection 112(2) of the CMA 1998, the Commission may issue a direction under section 51 of the CMA 1998 to direct a licensee making the undertakings and all other persons relying on such undertakings to comply with the registered undertakings;
 - (b) pursuant to subsections 116(1) and (3) of the CMA 1998, the Commission may apply to the High Court for the enforcement of a registered undertaking against the licensee providing the undertaking without requirement for the Commission to obtain certificate for leave; and
 - (c) pursuant to subsections 116(2) and (3) of the CMA 1998, where the Commission has issued a direction under section 51 of the CMA 1998 directing compliance, the issued direction may be enforced by the High Court as if the direction is a judgment of the High Court without requirement for the Commission to obtain certificate for leave.
- 5.4 In relation to a person that has been affected by the non-compliance of the registered undertaking, the following enforcement actions are available:
- (a) pursuant to subsection 116(1) of the CMA 1998, a person that has been affected by the non-compliance of the registered undertaking may apply to the High Court for the enforcement of a registered undertaking against the licensee providing the undertaking; and
 - (b) pursuant to subsection 116(2) of the CMA 1998, where the Commission has issued a direction under section 51 of the CMA 1998 directing compliance, a person that has been affected by the non-compliance of the registered undertaking shall obtain a certificate from the Commission for leave to proceed to the High Court for the enforcement of a registered undertaking, and the issued direction made pursuant to subsection 112(2) of the CMA 1998 may be enforced by the High Court as if the direction is a judgment of the High Court.
- 5.5 The procedure for the enforcement of a registered undertaking under section 116 of the CMA 1998 shall be subject to the rules of courts as may be applicable or in such manner as the High Court may deem just or expedient.

Annexure 1: Template for an access undertaking

**Access Undertaking
to the
Malaysian Communications and Multimedia
Commission**

**Pursuant to section 155 of the
Communications and Multimedia Act 1998**

[Date]

Definition and Interpretation

[Include the definition of terms and abbreviations used in the document here]

1 Persons giving the Undertaking

- 1.1 This undertaking ("**Undertaking**") is hereby provided to the Malaysian Communications and Multimedia Commission ("**Commission**") by [*insert Name/Entity of the applicant*] (thereafter, "**Applicant**") for the purpose of [*state purpose*], in accordance with section 155 of the Communications and Multimedia Act 1998 ("**CMA 1998**").

2 Background

2.1 Background and objectives

*[Pursuant to paragraph 3.2(b) of the Guidelines on Access Undertakings ("**Undertaking Guidelines**"), the Applicant shall include a brief background and objectives of the Undertaking, along with the principles the Undertaking aims to promote.]*

2.2 Licensee

[For the Applicant submitting the Undertaking, to briefly describe:

- (a) the date of incorporation and current ownership;*
- (b) the business or businesses carried out, including the Facilities and/or Services to be offered by the Applicant; and*
- (c) the licence(s) awarded by the Commission and the period of validity.]*

3 Undertakings

3.1 Scope and nature of the Undertaking

[Briefly provide the scope and nature of the Undertaking in reference to paragraphs 3.5, 3.6, and 3.7 of the Undertaking Guidelines, the Undertaking shall apply to facilities and/or services, whether regulated or unregulated in the Access List.]

3.2 Commitments undertaken in the Undertaking

[The Applicant's commitments, as outlined in paragraphs 3.8, 3.9 and 3.10 of the Undertaking Guidelines, and may extend to any additional commitments, where applicable. Other appropriate commitments to be included in the Undertaking may be subject to prior consultation with the Commission.]

4 Commencement and terms of the Undertaking

- 4.1 This Undertaking comes into effect, when it is registered by the Commission ("**Effective Date**").
- 4.2 This Undertaking will expire on [*date*] ("**Expiry Date**"). The Applicant undertakes to submit a new undertaking at least **six (6) months** prior to the Expiry Date of the Undertaking to fulfil any obligations under this Undertaking that extend beyond the Expiry Date, if any.

5 Cessation of ongoing obligations

Withdrawal

5.1 In line with section 113 of the CMA 1998, this Undertaking may be withdrawn with the approval from the Commission.

Survival

5.2 The Undertaking is enforceable unless and until the earlier of:

5.2.1 The Commission's approval of a withdrawal made by the Applicant in accordance with section 113 of the CMA 1998; or

5.2.2 The Expiry Date.

6 Enforcement

6.1 The Applicant acknowledges that the Commission may apply to court for the enforcement of the Undertaking in accordance with the CMA 1998 if the Applicant does not comply with the Undertaking.

6.2 Without limiting the Commission's powers under the CMA 1998 and otherwise at law, the Applicant acknowledges that the Commission may take action against the Applicant at any time during the period of the Undertaking on the following grounds:

6.2.1 The information provided by the Applicant to the Commission was false or misleading other than in an immaterial respect;

6.2.2 The undertaking effected is materially different to the undertaking submitted to the Commission for assessment; or

6.2.3 There has been a material change of circumstance since the Commission approved the application for undertaking.

7 Disclosure of this Undertaking

7.1 The Applicant acknowledges that the Commission shall maintain a register of the Undertaking, in both physical form and electronic media as provided for under sections 81 and 115 of the CMA 1998.

8 No Derogation

8.1 The Undertaking does not prevent the Commission from taking enforcement action at any time whether during or after the period of the Undertaking in respect of any breach by the Applicant of any term of the Undertaking.

- 8.2 Nothing in the Undertaking is intended to restrict the right of the Commission to take action under the CMA 1998 in the event that the Applicant does not fully implement and/or perform its obligations under this Undertaking or in any other event where the Commission decides to take action under the CMA 1998 for other non-compliances.

9 Governing Law

- 9.1 The Applicant recognises and acknowledges that the Undertaking shall be governed and construed in all respects in accordance with Malaysian law.
- 9.2 In the event of a dispute or claim arising from the Undertaking, the Applicant undertakes to submit to the exclusive jurisdiction of the courts of Malaysia.

10 Notices

- 10.1 Any notice or communication to the Commission pursuant to this Undertaking must be sent to:

Head, Market Regulation Division
Malaysian Communications and Multimedia Commission
MCMC HQ, Tower 1, Jalan Impact, Cyber 6
63000 Cyberjaya
Selangor Darul Ehsan
Malaysia

Executed as an Undertaking

Executed by [the Applicant] pursuant to section 155 of the CMA 1998.

Signed by]
For and on behalf of]
]]
]]
Date:].....

Accepted by the Malaysian Communications and Multimedia Commission pursuant to section 155 of the CMA 1998.

Signed by]
For and on behalf of]
MALAYSIAN COMMUNICATIONS AND]
MULTIMEDIA COMMISSION]
Date:].....

Schedules/Appendices/Annexure

[Include any attachments to be enclosed with the Undertaking here]